IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3956 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DR. CHHOTUBHAI L. PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner(s) : 1,
MS SANDHYA D NATANI, AGP for Respondent(s) : 1,
MS PAURAMI B SHETH for Respondent(s) : 2,
MR AJAY MEHTA with MR DEVANG VYAS for Respondent(s):3-5

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 20/02/2007
ORAL JUDGMENT

(1) The learned advocate for the petitioner has sought permission to amend the prayer clause. Permission is granted and he is directed to amend the prayer clause immediately.

(2) This petition has been filed with the following prayers, including the amended prayer:

"**28**. In the premises aforesaid, the petitioner prays as under:-

A) That this Honourable Court be pleased to issue a writ of certiorari and/or any other appropriate writ, order or direction quashing and setting aside the order dated 12.01.2007 passed by respondent No.2 and thereupon the proceedings initiated by respondent No.2 pursuant to and on the basis of application moved by respondent Nos.3, 4 and 5 under Section 50A of the B.P.T. Act, a copy whereof figures at Exhibit "D" to the memorandum of the present petition, and, thereupon, be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding respondent No.2 not to take cognizance of the application moved by respondent Nos.3, 4 and 5 under Section 50A of the B.P.T. Act, a copy whereof figures at Exhibit "D" to the memorandum of the present petition, for undertaking proceedings thereunder for framing of a Scheme in respect of Charutar Vidyamandal.

B) That pending the hearing and final disposal of the petition, this Honourable Court be pleased stay proceedings initiated by respondent No.2 pursuant to and on the basis of the application moved by respondent Nos.3, 4 and 5 under Section 50A of the B.P.T. Act, a copy whereof figures at Exhibit "D" to the memorandum of the present petition.

C) That this Honourable Court be pleased to pass such other and further orders as may be deemed just and proper.

D) That this Honourable Court be pleased to award costs;"

(3) Heard the learned advocate appearing for the petitioner, learned advocate appearing for respondent No.2 and learned advocate appearing for respondent Nos.3 to 5. In light of the view that the Court is inclined to take, the petition is taken up for final hearing and disposal today. RULE. The learned advocates appearing for the respective parties are directed to waive service of rule.

(4) Respondent Nos.3 to 5 herein moved an application under Section 50A of the Bombay Public Trusts Act, 1950 (the Act) on 06.01.2006. It is not necessary for the present to record various proceedings which took place before respondent No.2 in the interregnum, except for noting the fact that on 15.07.2006 respondent No.2 made an order for issuance of a public notice so as to inform all interested persons regarding the application under Section 50A of the

Act and the proceedings pending before respondent No.2.

(5) On 22.09.2006 the petitioner herein moved an application Exh.77 whereunder it was prayed that the following preliminary issue may be framed and decided by respondent No.2:

> "Whether it is expedient and necessary in the interest of the Trust to frame the scheme of this Trust?

While passing the order dated 12.01.2007 respondent No.2 records in Paragraph No.4 of the impugned order that vide pursis Exh.80 the applicants (respondent Nos.3 to 5 herein) have agreed to the said preliminary issue being decided.

(6) The grievance of the petitioner is that in the impugned order respondent No.2 has failed to assign any reason why application Exh.77 for deciding the preliminary issue is rejected. As against that, the learned advocate appearing for respondent No.2 authority has sought to sustain the impugned order on the ground that the issue whether a scheme is required under Section

50A(1) of the Act to be framed or not is yet open and hence, the petitioner cannot have any grievance at this stage. It was also submitted that considering order dated 15.07.2006, namely, whereunder respondent No.2 authority directed issuance of public notice and the said order having not been challenged, it was not open to the petitioner to raise any challenge as to initiation of proceedings at this belated stage. The learned advocate for respondent Nos.3 to 5, the original applicants, vehemently contended that once the findings recorded in order dated 15.07.2006 had attained finality, the same having not been challenged, the petition does not merit acceptance and is required to be summarily rejected.

(7) Section 50-A(1) of the Act reads as under:-

> "**50A. Power of Charity Commissioner to frame, amalgamate or modify schemes**.
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> (1) Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled of it, or where two or more persons having interest in a public trust

> make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may if after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust."

(8) On a plain reading the provision requires that regardless of what is stated in Section 50 of the Act, it would be open to the Charity Commissioner where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled of the trust; another contingency is, where two or more persons having interest in a public trust make an application to the Charity Commissioner in the prescribed manner, and such application in writing states that in the interest of the proper management or administration of a public trust, a scheme should be settled for the trust; in either of the contingencies the Charity Commissioner, may, after giving the trustees of such trust due opportunity to be heard, if he is

satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust. Meaning thereby, the Charity Commissioner has to record a satisfaction, after hearing the trustees of the existing trust, that it is necessary or expedient, in the interest of the proper management or administration of a public trust, to frame a scheme. Therefore, regardless of what the allegations are in the application moved by any person, or regardless of whether the proceedings have been initiated *suo motu* on the basis of a reason to believe, the first and foremost requirement of the provision is recording of a satisfaction by the Charity Commissioner that it is necessary or expedient to frame a scheme in the interest of proper management or administration of a public trust.

(9) The section, therefore, envisages a specific finding in the form of satisfaction that there is material and evidence on record to show that a scheme is required to be framed in the interest of proper management or administration of a public trust. In other words, the

existing trust, or the scheme, under which the existing trust functions, is not conducive for proper management or administration or such a public trust. This satisfaction, as envisaged by the provision, has to be only of the Charity Commissioner and such a satisfaction has to be recorded by the Charity Commissioner before the Charity Commissioner proceeds any further in the direction of framing a scheme. The section requires that the satisfaction is the prerequisite condition which is required to be satisfied before the Charity Commissioner can proceed further to frame a scheme or even proceed further in that direction. The authority is entitled to record, in the first instance, a finding as to the satisfaction envisaged by the provision before adverting to other issues. Though the order may be a consolidated order, a specific, categorical finding as to the satisfaction has to be recorded first in unambiguous terms on the basis of cogent and relevant evidence, uncluttered by any other issues or considerations.

(10) Testing the impugned order dated 12.01.2007 wherein application Exh.77 has been rejected at the anvil of the aforesaid requirement of Section 50A(1) of the Act it is apparent that not only is the order silent as to recording of any satisfaction, in fact there are no reasons forthcoming for rejecting the application Exh.77. It is not a question as to whether such an application could or could not have rejected. The question is :- whether the impugned order satisfies the legislative requirement ? Not only does the order does not assign any reason for rejecting application Exh.77 but proceeds on an entirely erroneous premise. Respondent No.2 authority refers to provision of sub-section (2A) of Section 50A of the Act and states that the question is not only whether the scheme should be framed but also whether trustees should be appointed or not. Sub-section (2A) of Section 50A of the Act is an enabling provision. The said sub-section provides for a situation where the scheme, as and when framed, provides for the number of trustees, the mode of appointment of trustees including the appointment of first trustees, vesting of the trust property in the

trustees so appointed, etc. which is a stage very much later in the legislative scheme of Section 50A of the Act. In fact, these are factors which are required to be taken into consideration at the point of time when the scheme is being framed. They cannot be factors relevant for the purposes of testing whether or not it is necessary or expedient to frame a scheme. The position in law is well settled. Once the authority in exercise of quasi-judicial powers while arriving at a decision takes into consideration an irrelevant factor, it is not possible to state to what extent the decision making process is vitiated while arriving at such a decision on the basis of consideration of such an irrelevant factor. In such circumstances, the entire order falls to the ground and cannot be sustained.

(11) In light of what is stated hereinbefore, it is apparent that the impugned order dated 12.01.2007, to the extent it rejects application Exh.77, cannot be sustained and is required to be quashed and set aside. The petitioner has raised a preliminary issue and that issue has in fact not been decided as required in law.

The order made by respondent No.2 authority on 12.01.2007 to the extent it rejects application Exh.77 is hereby quashed and set aside. Application Exh.77 stands restored to file for taking a decision afresh in accordance with law. Respondent No.2 authority is directed to decide the said preliminary issue as a separate issue, even if the respondent authority comes to the conclusion that it would be in the interest of all concerned to decide all the issues together.

(12) The petition is allowed accordingly to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*